

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8600 OF 2015**

Ravindra Suresh Pathak

..Petitioner

Vs.

Hind Cooperative Housing Society & Anr.

..Respondents

Mr. Chetan Patil for the Petitioner

Mr. Kishore Patil i/b Mr. Amit Munde for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 27th AUGUST, 2015

PC.

1 The Writ Jurisdiction of this Court is invoked against the order dated 28-7-2015, passed by the Learned District Judge-2, Kolhapur, by which order, the Appeal being Misc Civil Appeal No.10 of 2014 filed by the Respondent No.1 came to be allowed and resultantly the order dated 1-1-2014 passed on the application Exhibit 5 filed by the Petitioner herein i.e. the original Plaintiff came to be set aside and the said application Exhibit 5 came to be rejected.

2 The Petitioner herein is a member of the Respondent No.1 housing society which is a bungalow society. The controversy in the Suit in question is as regards the entitlement of the Respondent No.1 society to carry out construction relating to the community hall and to the toilet block attached

thereto. The said hall and the toilet block attached thereto are in the plot of land which is adjacent to the plot of land on which the Plaintiff has his bungalow. The Plaintiff has filed the Suit in question being Regular Civil Suit No.884 of 2013 for restraining the Defendant No.1 society from carrying out construction or for utilising the suit property 1A and 1B for commercial purposes namely for marriage ceremonies etc. In the said Suit, the Plaintiff filed an application for temporary injunction and the injunction sought was for restraining the Defendant No.1 from carrying out construction in the suit property and for restraining it from utilising the suit property for commercial purposes namely for marriage ceremonies etc. The Defendant No.1 filed its Written Statement cum reply to the Suit and the application for temporary injunction and in the context of the challenge raised in the present Petition what is relevant to note is that in the said reply, the Respondent No.1 contended that the said property 1A and 1B was being used for commercial purposes in fact in the said Written Statement, the Defendant No.1 whilst dealing with the averments of the Plaintiff in paragraph 5 of the plaint has termed the said averments as false and incorrect.

3 The Trial Court considered the said application for temporary injunction and by its order dated 1-1-2014 allowed the said application partly whereby the Defendant No.1 was restrained from utilising the suit property 1A and 1B i.e. the hall for commercial purposes. In so far as the injunction sought

in respect of the construction is concerned, the same was refused by the Trial Court on the ground that the construction has progressed substantially.

4 The Defendant No.1 aggrieved by the said order dated 1-1-2014, passed by the Trial Court filed an Appeal being Misc Civil Appeal No.10 of 2014. It seems that in the said Appeal documents were produced by the Defendant No.1 and since the Lower Appellate Court without considering the impact of the said document or the relevance of the said document to the adjudication of the application for temporary injunction, had remanded the matter back to the Trial Court. This Court by order dated 3-12-2014 allowed the said Writ Petition and set aside the order passed by the Lower Appellate Court and remanded the matter back to the Lower Appellate Court for a denovo consideration of the Appeal in terms of the observations which were made in the said order dated 3-12-2014. It is on remand that the instant order dated 28-7-2015 has been passed by the Lower Appellate Court i.e. the Learned District Judge-2, Kolhapur, allowing the Appeal and thereby setting aside the order dated 1-1-2014 passed by the Trial Court.

5 The impact of the impugned order would be that the Defendant No.1 society would be entitled to utilise the community hall for commercial purposes without any limitation as to whom the said community hall can be let out.

6 Notwithstanding the order passed by the Lower Appellate Court allowing the Appeal, in the above Petition the Learned Counsel appearing for the Defendant No.1 society makes a statement that in so far as utilisation of the hall for commercial purposes is concerned, the Defendant No.1 would presently restrict to the members only and would file an appropriate application before the Trial Court for letting it out to outsiders by placing reliance on the relevant documents for seeking the said relief viz letting it out to outsiders. This statement, the Learned Counsel appearing for the Defendant No.1 made in view of the objections raised on behalf of the original Plaintiff i.e. the Petitioner herein that though before this Court reliance is sought to be placed on the amended bye-laws and the resolutions which have been passed by the society from time to time permitting the utilisation of the community hall for commercial purposes by letting it out to outsiders. The same has not been averred in the Written Statement. The aforesaid statement made on behalf of the Respondent No.1 is a fair statement as the Respondent No.1 had otherwise succeeded in the Appeal before the Lower Appellate Court and who in terms of the order passed by the Lower Appellate Court would be entitled to use it for commercial purposes without restrictions.

6 In my view, since the said statement of the Learned Counsel for the Respondent No.1 is a fair statement, the same deserves to be accepted.

Since the Petitioner has not filed an Appeal aggrieved by that part of the order where by the Trial Court has refused the relief to the Petitioner i.e. in respect of the construction, in my view, the contention of the Petitioner in so far as the said aspect is concerned would have to be rejected. In my view therefore, the above Writ Petition can be disposed of by issuing the following directions:

(i) Though the limited injunction which was granted in favour of the Petitioner has been set aside by the Lower Appellate Court in view of the setting aside of the order dated 1-1-2014 passed by the Trial Court, in view of the statement made on behalf of the Defendant No.1 society by the Learned Counsel Mr. Kishore Patil on instructions of the Advocate on record Mr. Munde, for the present, the Defendant No.1 society would be entitled to utilise the said hall for commercial purposes by restricting it to the members only.

(ii) In terms of the statement made by the Learned Counsel for the Defendant No.1, the Defendant No.1 would file an appropriate application with relevant documents before the Trial Court for being permitted to utilise the said community hall for commercial purposes by letting it out to outsiders. If any such application is filed, the same to be served on the Plaintiff and the concerned court would consider the same on its own merits and in accordance with law by giving proper opportunity to the parties.

(iii) The instant order to operate pending the Suit and would be in addition to the order that would be passed on the application that would be filed by the Defendant No.1, in the event the said application is decided in favour of the Defendant No.1

(iv) Needless to state that the application that would be filed by the Defendant No.1 and the Suit would be tried on their own merits and in accordance with law uninfluenced by the impugned order or the instant order.

7 With the aforesaid directions the Writ Petition is disposed of.

[R.M.SAVANT, J]